

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1147

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 77-1147

B
P. J. S

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHN YARMOSH, JOHN IANNONE, NICHOLAS BOTTA, LAWRENCE MESSINA,
IRVING ALBAHARI, JOSEPH FALCO and DAVID STEINBERG,

Defendants-Appellants.

On Appeal from the United States District Court for the
Southern District of New York

JOINT APPENDIX

ROBERT B. FISKE, JR.
United States Attorney
for the Southern
District of New York
Attorney for Plaintiff-
Appellee

Michael D. Abzug
Assistant United States Attorney
Of Counsel

GUGGENHEIMER & UNTERMYER
Attorneys for Defendant-
Appellant John Yarmosh

Harold Baer, Jr.
Norman L. Greene
Of Counsel

MAY 16 1978

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YARMOSH, JOHN

0802

11 22

76 1074

05

OFFENSES CHARGED
 1
 2
 1
 2
 Consp. to conduct illegal gambling business
 Conducting illegal gambling business
 Consp. to conduct illegal gambling business
 Conducting illegal gambling business

3/18

SUPERSEDING COUNTS

INDICTMENT		ARRAIGNMENT		TRIAL		SENTENCE	
High Plead Date	11-22-76	12-2-76	Trial Set For	Voir Dire	Disposition of Charges	1-31-77	3-14-77
Indict. Waived	☐	1st Plea	12-2-76	☒ G ☐ NOL	Trial Begun	☐ Convicted	☐ On All Charges
Superseding Indict/info	☐	Final Plea	1-31-77	☐ G Plea W/Drawn	Trial Ended	☐ Acquitted	☐ On Lesser Offense(s)
In Charging District	1-31-77			☐ NG ☒ G ☐ NOL		☐ Dismissed	☐ WOP ☐ WP
						☐ On Government Motion	

MAGISTRATE		OUTCOME	
SEARCH WARRANT	ISSUED RETURN	DATE	INITIAL/NO.
SUMMONS	ISSUED SERVED	INITIAL APPEARANCE DATE	DATE
ARREST WARRANT ISSUED		PRELIMINARY EXAMINATION OR REMOVAL HEARING	DATE HELD
COMPLAINT		WAIVED ☐ NOT WAIVED ☐	Tape Number
OFFENSE (in Complaint)		INTERVENING INDICTMENT ☐	
			DISMISSED ☐
			HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐
			HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW ☐

U.S. Attorney or Asst.

ATTORNEYS

Defense: ☐ CJA ☐ Ret ☐ Waived ☐ Self ☐ None / Other: ☐ PD ☐ CD

Michael D. Abzug
 791-1162

show last names and suffix numbers of other defendants on same indictment/information: Esposito-01, Rizzo-02, Botta-03, Messina-04, Iammone-06, Albahari-07, Falco-08, Renna-09, Steinberg-10, Maggio-11

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c)
11-22-76		Filed Indictment & Ordered sealed until further Order of the Court.....Cannella, J.	
11-23-76		Indictment Ordered unsealed.....Cannella, J.	
11-24-76		Filed affidavit & Order that indictment 76 Cr. 1074 be unsealed.....Cannella, J.	
12-2-76		Def't. not present (atty. not present). R.O.R. Case assigned to Weinfeld, J. for all purposes.....Motley, J.	
12-3-76		Filed Govts. notice of readiness for trial.	
12-10-76		Filed defts. affdvt. and order to show cause for an order granting defts. a hearing and suppressing all conversations Ret. 12-14-76.....WEINFELD, J.	
12014076		Case called- Trial set for Monday 2-7-77 at 10 A.M. in rm 1506.....Weinfeld, J.	

V. EXCLUDABLE DELAY

EXCLUDABLE DELAY	EXCLUDABLE DELAY	EXCLUDABLE DELAY	EXCLUDABLE DELAY
(a)	(b)	(c)	(d)

- 12-20-76. Hearing on defts. motion to suppress begun and continued before Weinfeld, J. Hearing concluded - Court finds Govt. has made satisfactory explanation for filing & sealing provisions - According motion to suppress made by all defts. is denied....WEINFELD, J.
- 12-22-76 Fld memorandum of law in behalf of all deft's in support of the application to controvert the orders authorizing interception of oral communications
- 12-22-76 Fld Govt's memorandum of law
- 12-22-76 Fld govt's affid in redponse to various pre-trial motions which the deft's in the above captioned case have made
- 12-22-76 Fld memo end on OS2 fld 12-10-76 In so far as they seek to suppress the electronic surveillance on the grounds that there was a delay in sealing the tapes The motion of deft's Botta, & Messina is denied as per oral opinion this date....Weinfeld, J.
- 12-22-76 Fld OPION # 45458 in re various pre-trial motions; Def't's Iannone & Albahris motions for severance & to strike references to aliases are denied. DEft's Botta & Messina motions on behalf of themselves & all other defts in re wiretapping are denied except to the sealing of the wiretap tapes as to which an evidentiary hearing is required..Weinfeld, J. M/N
- 1-31-77 DEft Atty present DEft W/D his previous plea of N/G & enters a plea of guilty to CT 1 One of the indictment Ct Two (2) remains open. PSI ordered. Sent adj to Thur 2-24-77 at 2:15 P.M. room 1506 DEft cont'd ROR... Weinfeld, J.
- 1-31-77 Filed Superseding Indictment & referred to Weinfeld, J.Pierce, J.
- 2-3-77 Fld order, affid & application of Michael D. Abzug AUSA
It is ordered that on 2-3-77, the aforesaid tape recordings shall be ubsealed so that they may be used to ensure the accuracy & authenticate duplicate tape recordings that the govt intends to use at the trial. Upon conclusion the original tape recordings shall be resealed & returned to the custody of the F.B.I... Weinfeld, J. M/N
- 2-3-77 Filed Transcript of record of proceedings, dated 12-14-76
- 2-3-77 Filed Transcript of record of proceedings, dated 12-20-76

- continued -

FEE AND RESTITUTION PAYMENTS		RECEIPT NUMBER	CD NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET, U. S. vs

YARMOSH, JOHN

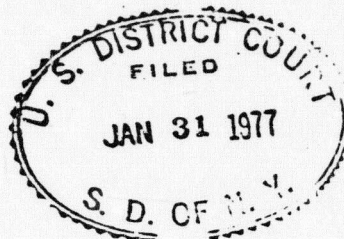
A-3

76 1074

Yr. Docket No.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DE		
	(Document No.)	(a)	(b)	(c)
2-8-77	Filed affid & order that on 2-4 75 the aforesaid original tape recordings shall be resealed & held in the custody of the FBI pursuant to the 6-24-75 order of Judge Palmieri & the 8-6-75 order of Judge Stewart....Pierce, J. M/N			
02-15-77	Filed Govt's proposed examination of prospective jurors.			
02-15-77	Filed Govt's request to charge.			
02-10-77	Sentence adj to 03-14-77 at 10 AM in Rm. 705			
3-14-77	Govt oral application to NOLLE this indictment is granted..Weinfeld J. (original)			
3-14-77	Filed JUDGMENT & COMMITMENT DEft (atty present) the deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of ONE (1) YEAR & ONE (1) DAY on count 1. DEft continued on bail pending appeal Special condition being that the record on Appeal & the Appendix on Appeal & the Appellant's Points be filed within THIRTY (30) DAYS from this date. And that the U.S. Atty file the Respondent's brief TEN (10) DAYS thereafter. Count 2 is dismissed on motion of deft's counsel with the consent of the Govt..... WEinfeld, J Ent 3-15-77....Issued copies			
3-18-77	Filed notice of appeal from judgment filed 3-14-77 (Copy to deft's atty & U.S. Atty)			
4-1-77	Filed transcript of record of proceedings dated <u>1/24/77</u>			
4-1-77	Filed transcript of record of proceedings dated <u>3/14/77</u>			

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA :

-v- :

INDICTMENT

S 77 Cr.

RICHARD ESPOSITO; a/k/a "Dixon"
RICHARD RIZZO, NICHOLAS BOTTA,
LAWRENCE MESSINA, JOHN YARMOSH,
JOHN IANNONE, a/k/a "Kodak",
IRVING ALBAHARI; JOSEPH FALCO,
NICHOLAS RENNA, DAVID STEINBERG,
and LOUIS MAGGIO,

Defendants. :

1976 CR 1074

COUNT ONE

The Grand Jury charges:

1. From in or about October, 1974 up to and including in or around November 1975 in the Southern District of New York, and elsewhere, RICHARD ESPOSITO, a/k/a "Dixon," RICHARD RIZZO, NICHOLAS BOTTA, LAWRENCE MESSINA, JOHN YARMOSH, JOHN IANNONE, a/k/a "Kodak," IRVING ALBAHARI, JOSEPH FALCO, NICHOLAS RENNA, DAVID STEINBERG, and LOUIS MAGGIO, the defendants, and Daniel Kramer, Marie Esposito, Salvatore Landi, Robert Centeno, and Kenneth Davis, named herein as co-conspirators but not as defendants, unlawfully, wilfully, and knowingly, did combine, conspire, confederate and agree, together and with each other and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 1955.

2. It was part of said conspiracy that said defendants would unlawfully, wilfully and knowingly, conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a

betting business (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 and 225.10, (b) involving five or more persons who conducted, financed, managed, supervised, directed and owned a part of said illegal gambling business, and (c) being and remaining in substantially continuous operation for a period in excess of thirty days or having a gross revenue of two thousand dollars in a single day.

3. Among the means whereby the defendants carried out the conspiracy were the following.

a. The defendant RICHARD ESPOSITO, controlled, managed, directed, and supervised the illegal gambling business (commonly known as the "Dixon" operation) which accepted sports wagers at various locations in New York County, including 2433 Second Avenue, 107 East 125th Street, 251 East 123rd Street, Apartment 3C.

b. Each of these locations, hereinafter referred to as wirerooms, was managed and supervised by the defendant RICHARD ESPOSITO in the manner described below:

(1) Individuals commonly known as "runners," including defendants IRVING ALBAHARI, LOUIS MAGGIO, and JOHN IANNONE, a/k/a "Kodak," together with individuals not named herein, would transmit sports wagers on behalf of others via telephone to the defendants RICHARD RIZZO, DAVID STEINBERG, and co-conspirators Danny Kramer, Salvatore Landi and Kenneth Davis, who worked in the wireroom on a weekly basis; the aforementioned defendant-runners, together and with others not named herein, would receive their "figures" or "pay and collects" from the wireroom, that is, an accounting of how much their bettors won or lost during the week. These "figures" or "pay and collects" enabled the defendant-runners to collect losses from and pay winnings to the individual bettors

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on whose behalf they had transmitted wagers to the wireroom.

(2) The money owed to the "Dixon" operation at the end of the week would be collected from the defendants IRVING ALBAHARI, JOHN IANNONE, a/k/a "Kodak," LOUIS MAGGIO and others known and unknown to the Grand Jury by the defendant RICHARD ESPOSITO or Salvatore Landi, named herein as a co-conspirator but not as a defendant. Similarly, the money owed by the "Dixon" operation at the end of the week would be paid to the defendants IRVING ALBAHARI, JOHN IANNONE, a/k/a "Kodak," LOUIS MAGGIO and others known and unknown to the Grand Jury by the defendant RICHARD ESPOSITO or Salvatore Landi, named herein as a co-conspirator but not as a defendant.

c. From time to time information concerning current odds on sports events (commonly known as the "line") would be transmitted to the "Dixon" operation's wireroom from wirerooms of other unlawful gambling operations. In addition, the aforementioned wirerooms assisted each other in the operation at the illegal gambling businesses by "laying off," that is, by placing and receiving large wagers with each other so that no single wireroom would be exposed to a large loss. These other wirerooms operated in the Southern District of New York and elsewhere in the following manner:

(1) The defendants NICHOLAS BOTTA, LARRY MESSINA, and JOHN YARMOSH, together and with others not named herein, worked in a wireroom belonging to the "Mr. White" unlawful sports gambling business. The defendants NICHOLAS BOTTA, LARRY MESSINA, JOHN YARMOSH, together with others not named herein would record and tally sports wagers received at the wireroom via telephone from the co-conspirator Danny Kramer and other unidentified runners who had transmitted wagers to the "Mr. White" wireroom. Similarly, the defendants NICHOLAS BOTTA and JOHN YARMOSH would also pay money owed by the

"Mr. White" operation by the co-conspirator Danny Kramer as well as other unidentified runners who transmitted wagers to the "Mr. White" wireroom.

(2) The defendant JOSEPH FALCO, with others not named herein, worked in a wireroom belonging to the "National" operation. JOSEPH FALCO would record and tally the "Dixon" operation's "laid-off" sports wagers.

(3) The defendant NICHOLAS RENNA, with others not named herein, worked in a wireroom belonging the "Commander 1" operation. NICHOLAS RENNA would record and tally the "Dixon" operation's "laid-off" sports wagers.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants committed and caused to be committed, among others, the following overt acts in the Southern District of New York;

1. On June 13, 1975, at approximately 1:43 p.m., the defendant RICHARD ESPOSITO had a telephone conversation with defendant RICHARD RIZZO.

2. On June 13, 1975, at approximately 1:43 p.m., the defendant DAVID STEINBERG had a telephone conversation with the defendant RICHARD RIZZO.

3. On June 14, 1975, at approximately 12:15 p.m., the defendant JOSEPH FALCO had a telephone conversation with the defendant RICHARD RIZZO.

4. On June 15, 1975, at approximately 2:01 p.m., the defendant IRVING ALBAHARI, had a telephone conversation with the defendant RICHARD RIZZO.

5. On July 15, 1975, at approximately 5:21 p.m., the defendant JOHN IANNONE had a telephone conversation with the defendant RICHARD RIZZO.

6. On July 17, 1975 at approximately 7:45 p.m., the de-

versation with co-conspirator Daniel Kramer.

7. On July 23, 1975, at approximately 12:33 p.m., the defendant NICHOLAS RENNA had a telephone conversation with the defendant RICHARD RIZZO.

8. On July 23, 1975 at approximately 11:55 a.m., the defendant LOUIS MAGGIO had a telephone conversation with defendant RICHARD RIZZO.

9. On November 2, 1975, the defendants NICHOLAS BOTTA and LAWRENCE MESSINA had a telephone conversation with co-conspirator Daniel Kramer.

10. On November 13, 1975, the defendant JOHN YARMOSH had a telephone conversation with co-conspirator Daniel Kramer.

11. On November 13, 1975, co-conspirator Daniel Kramer went to the Mikado Restaurant, 21 West 39th Street, New York, New York.

(Title 18, United States Code, Section 371)

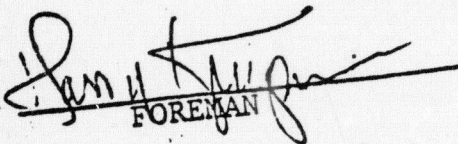
COUNT TWO

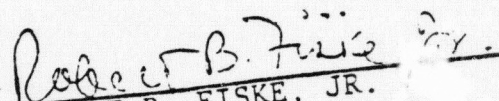
The Grand Jury further charges:

From on or about October 1, 1974, up to and including on or about November 30, 1975, in the Southern District of New York, and elsewhere, RICHARD ESPOSITO, a/k/a "Dixon," RICHARD RIZZO, NICHOLAS BOTTA, LAWRENCE MESSINA, JOHN YARMOSH, JOHN IANNONE, a/k/a "Kodak," IRVING ALBAHARI, JOSEPH FALCO, NICHOLAS RENNA, DAVID STEINBERG, and LOUIS MAGGIO, the defendants, and others known and unknown to the Grand Jury, unlawfully, wilfully, and knowingly, did conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports betting business, (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law Sections 225.05 and 225.20, (b) involving five or more persons who

conduct, manage, supervise, direct or own a part of said illegal gambling business, and (c) remaining in substantially continuous operation for a period in excess of thirty days or having a gross revenue of two thousand dollars in a single day.

(Title 18, United States Code, Sections 1955 and 2)


FOREMAN


ROBERT B. FISKE, JR.
United States Attorney

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 UNITED STATES OF AMERICA :

5 vs. :

6 RICHARD ESPOSITO, et al., : 76 Cr 1074

7 Defendants. :

8 -----X

9 New York, N. Y.
10 January 26, 1977 - 8:45 a.m.

11 B e f o r e:

12 HON. EDWARD WEINFELD,

13 District Judge

14
15 Appearances:

16 ROBERT B. FISKE, JR., Esq.
17 United States Attorney for the
18 Southern District of New York
19 BY: MICHAEL D. ABZUG, Esq.
20 Special Attorney, Department of Justice

21 GUGGENHEIMER & UNTERMYER, Esqs.
22 Attorneys for defendant John Yarmosh
23 BY: HAROLD BAER, Esq.
24 NORMAN GREENE, Esq.
25

1 wc (In chambers)

2 THE COURT: Mr. Baer, you made a call to one
3 of my law clerks. You said you had an application to make.
4 I will hear your application.

5 MR. BAER: Thank you, your Honor. I believe on
6 the 18th of January the United States Supreme Court decided
7 a case, the United States v. Donovan. I read that case
8 over the weekend in Law Week, and it occurred to me that
9 in terms of the government's case here at bar, United
10 States v. Esposito, and more specifically with respect to
11 my client John Yarmosh, that the Donovan case mandated
12 that the government provide notice of the interception
13 of my client's voice and of the conversation which was
14 recorded in July, long in advance of when they did do so.

15 What occurred, so far as I can piece it
16 together, from the documents in my possession furnished to
17 me by the United States, there was a tap which intercepted
18 a conversation in which he was a party as well as a
19 conversation in which he was not a party but referred to,
20 both in July of 1975; that there was a surveillance in
21 pictures of my client taken at a single meeting, again in
22 July of 1975; that there was certainly understanding on
23 the part of the government on or about the time of that
24 surveillance, which came clearly, completely and directly
25 from the conversation intercepted, of whom my client was,

1 we

3

2 again, following this surveillance in July of 1975. There
3 was a sealing of the tapes from that tap on July 31. My
4 client's name was not amongst those submitted at that
5 juncture as appropriate or discretionary to receive notice.
6 He did not receive notice. He did not receive notice
7 until better than a year later than that, or August of 1976.

8 Now, whether this is a willful or at least a
9 knowing failure by the government, which I believe, although
10 as your Honor, I am certain, can tell, it is not perfectly
11 clear how many Justices of the Supreme Court come out each
12 way. But it is clear to me at least that by August, when
13 he finally received notice, that was certainly something that
14 the Court in the Donovan case would find as having been too
15 long if the government knew more than a year before who
16 Mr. Yarmosh was and failed to give him notice.

17 Although I say all this comes from only those
18 facts that I have, all I am here for, as I understand it,
19 is an application to make a motion and perhaps to have a
20 hearing with respect to the suppression of those inter-
21 ceptions, or that interception in July of 1975.

22 And I must add that I am not an expert on that
23 opinion, which I see the Court is holding in its hand, but
24 it is in fact my reading of what it is that the Court is
25 saying.

1 wc

2 MR. ABZUG: You Honor, as your Honor is aware,
3 the holding of the Donovan case, at least the majority
4 opinion, is that it upheld the admissibility of an
5 electronically intercepted conversation, where a person who
6 was known to the Government to have been picked up on the
7 wire was not brought to the District Court Judge's attention
8 within the 90-day period prescribed by the statute and
9 therefore was not notified within that 90-day period.

10 In this case Mr. Yarmosh was intercepted a
11 single time on July 13 at 2:19 p.m.

12 THE COURT: July 13, 19 seventy --

13 MR. ABZUG: -- five, at 2:19 p.m. The order
14 authorizing that interception expired on July 31, 1975.
15 Inventory or notices were served within 90 days on
16 October 30, 1975, when a complete list of persons who were
17 known to have been intercepted was submitted to District
18 Judge Carter. That list did not include Mr. Yarmosh's
19 name, for the simple reason that the government was unaware
20 at that time that Mr. Yarmosh had been intercepted on the
21 wiretap.

22 The first evidence that we had of Mr. Yarmosh's--
23 the first evidence in the grand jury that we had of even
24 Mr. Yarmosh's participation was in November of 1975 in
25 grand jury testimony. The government did not learn that

1 wc

2 Mr. Yarmosh had been positively intercepted on July 13,
3 1975, until August 26, 1976, when somebody listened to
4 that particular conversation and recognized, yes, that's
5 John Yarmosh's voice.

6 However, a couple of weeks prior to that Mr.
7 Yarmosh was notified that he was picked up on the wiretap,
8 for the following reason: On August 6, 1976, an amended
9 list of persons or an additional list of persons was
10 submitted to the District Court in a government's affidavit
11 which stated to the District Court that the following
12 additional people had been intercepted on the second wire.

13 I had a conversation with Mr. Bradbury, who is
14 the special agent of the FBI, prior to submitting that
15 list to the District Court, and he said to me that it was
16 very, very probable that Mr. Yarmosh had been intercepted
17 on the second wire. He was not positive, but I thought
18 that we would err on the side of caution and issue the
19 notice to Mr. Yarmosh that he had been intercepted. Two
20 weeks later we found out that in fact that had been
21 positively so.

22 The facts that I have just set before the
23 Court are readily distinguishable, I submit, from the
24 Donovan case. In our case it was a complete list of
25 persons that were known to have been intercepted submitted

1 wc

2 to the District Court. Mr. Yarmosh was not intentionally
3 or inadvertently omitted from that list within the 90-day
4 period, or perhaps inadvertently only to the extent that
5 we had no way of knowing that he had been intercepted during
6 the 90-day period.

7 In these circumstances I would submit that the
8 conversation is clearly admissible.

9 I would also like to bring to the attention of
10 the Court, and I think the Supreme Court notes it in a
11 footnote as significant, that Mr. Yarmosh has not been
12 prejudiced by any of the delay in this case. Mr. Baer
13 has not alleged any prejudice; I don't see how he could.
14 Mr. Yarmosh has been provided with the transcript of his
15 intercepted conversation, he has been provided with the
16 orders, applications, and affidavits submitting the
17 electronic surveillance in this case. Mr. Baer has
18 participated in the suppression hearing that was held in
19 this case. The Court has ruled that all motions that are
20 made by one defendant will accrue to the benefit of all.

21 So I think in this case, and under the Donovan
22 case, that the conversation is clearly admissible.

23 MR. BAER: Can I respond to that, your Honor,
24 for just a moment on two separate points, minute each?

25 In terms of prejudice, I really don't believe

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that that is what the Court's ruling was. I think that the Court is talking here about the way in which the Justice Department is to operate appropriately .

THE COURT: Do you question any of the statements made by Mr. Abzug?

MR. BAER: Yes, I question one. That is the other point.

THE COURT: What do you question as to his factual presentation?

MR. BAER: My understanding from a conversation that I had with Mr. Abzug was -- and I don't remember hearing it here -- is that in November, at the latest, November of 1975, Mr. Yarmosh was identified in the grand jury. That is again eight months or better before he received notice. I believe that since the July conversation was a prelude or a predicate to a surveillance at the Kennedy Airport Diner in which they took a slew of pictures, which is the only identification they have of my client, to my knowledge, or that they have told me about anyway, that obviously they knew exactly who he was and they knew it was his voice on the July 13 interception, or they should have in July when they covered this airport diner meeting with these other two defendants.

Now, that is the question which I really believe,

1 wc
2 or at least one of them has to be resolved through some
3 kind of testimony, but that is essentially what I disagree
4 with in his presentation.

5 THE COURT: There really are two matters
6 before the Court now. The first matter and the prime one
7 is whether or not the cutoff date for the motions having
8 been established and the case having been set for trial,
9 motions should be entertained. I set this case for
10 trial, I believe, on December 14. Each defendant -- I
11 believe there are seven or more perhaps --

12 MR. ABZUG: Eight at this juncture, your Honor.

13 THE COURT: -- is represented by independent
14 counsel. In fact, the Court to avoid a situation of a
15 possible conflict in representation required, the Court
16 recalls it, two defendants to engage counsel other than
17 counsel they have previously retained, in order to avoid
18 a conflict.

19 With so many defendants and so many lawyers, it
20 was, to say the least, difficult to set a date for trial,
21 and finally the date was set, much later than the Court
22 wanted to set it, for February 7, 1977.

23 I don't recall at this moment when the cutoff
24 date for motions was fixed, but it was sometime back.
25 The case has moved forward for trial, is about to go to

1 wc

9

2 trial, and the Court denies the application for leave to make
3 a motion.

4 Moreover, on the representation by the Assistant
5 United States Attorney and taking into account the statement
6 made by attorney representing the defendant, there is no
7 possible basis for any claim of prejudice in this case. The
8 case will proceed to trial.

9 MR. BAER: Your Honor, will we have, with
10 respect to this application, the same opportunity in terms
11 of pretrial motions as there is with respect to the others,
12 that is, may we continue to perfect this application on
13 appeal?

14 THE COURT: Under the statute you have a right
15 to appeal, do you not?

16 MR. BAER: No, no, but I don't want to do that.
17 I understand that the law --

18 THE COURT: I am not depriving you of any right
19 you have under the statute and under law. I am not enlarging
20 any right you have; I am not restricting any right you have
21 too.

22 MR. BAER: I understand that. What I am anxious
23 to do is to follow the precepts, if I can, in the Burke
24 case, which was decided last year, which really provides
25 that where the Court agrees, then the right to appeal along

1 wc
2 with the government's consent is reserved. I would,
3 in other words, not want to go now to the Court of Appeals,
4 but similarly with all the pretrial motions I would like
5 the opportunity to include this one.

6 THE COURT: This disposition is without prejudice
7 to any right that you have.

8 MR. BAER: Maybe you can make that clearer, if the
9 Court would hear you for a moment.

10 MR. GREEN: Your Honor, before I get involved in
11 this, I would like to mention that I have not been formally
12 admitted to this court, but if the Court gives me leave
13 to speak now, I will.

14 THE COURT: Yes.

15 MR. GREEN: The rule is that if our client
16 pleads guilty to this indictment, we waive appealing any
17 motions, any issues not going to the issue of guilt after
18 our plea. Earlier motions we can appeal because the
19 government and the Court consented to let us do so.

20 Under the Burke case the government's consent
21 and the Court's consent are a prerequisite to appealing
22 issues not going --

23 THE COURT: What section is that?

24 MR. BAER: The Burke case is 517 F.2d 377.

25 THE COURT: What is the section of the criminal
 code on which you rely?

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2 MR. GREEN: This is not a section, your Honor.
3 This is a principle of law that we are --

4 THE COURT: Are you familiar with that, Mr.
5 Abzug?

6 MR. ABZUG: I am familiar with the Burke case.
7 I am frankly not familiar with any principle that Mr.
8 Green set forth. I am not familiar with the section.

9 MR. GREEN: May I read the language to you,
10 your Honor?

11 THE COURT: Yes.

12 MR. GREEN: "The cases are legion that a plea
13 of guilty to an indictment is an admission of guilt and a
14 waiver of all nonjurisdictional defects."

15 THE COURT: In nonjurisdictional matters.

16 MR. GREEN: Of all nonjurisdictional matters,
17 correct. "However, an appeal would lie in such a case on
18 an issue not going to guilt when there had been a plea
19 expressly reserving the point accepted by the Court with
20 the government's consent."

21 And what we are looking for in this case is
22 the Court's consent and the government's consent, if we
23 make this plea, to appeal this denial of this application.

24 THE COURT: Do you have any objection to that?

25 MR. ABZUG: I have no objection to that, your

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2 Honor.

3 THE COURT: If your client enters a plea of
4 guilty, his right to appeal with respect to this disposition
5 is reserved.

6 MR. GREEN: Thank you.

7 MR. BAER: Thank you.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

RICHARD ESPOSITO, a/k/a "DIXON",
IRVING ALBAHARI, JOHN IANNONE, a/k/a
"KODAK", LOUIS MAGGIO, NICHOLAS
BOTTA, JOHN YARMOSH, LAWRENCE
MESSINA, DAVID STEINBERG,
JOSEPH FALCO, RICHARD RIZZO and
NICHOLAS RENNA,

Defendants.

New York, New York
March 14, 1977 - 10:00 a.m.

B e f o r e:

HON. EDWARD WEINFELD,

District Judge.

APPEARANCES:

MICHAEL D. ABZUG, ESQ., AUSA
Attorney for the Government

EDWARD PANZER, ESQ.
Attorney for Deft. Esposito

LEONARD EISENBERG, ESQ.,
Attorney for Deft. Albahari

STEPHEN LAIFER, ESQ.
Attorney for Deft. Iannone

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2 community interest and, I submit, your Honor, that the
3 community would not be terribly offended if your Honor was
4 as lenient as possible to this particular defendant.

5 THE COURT: Mr. Botta, do you want to make
6 any statement on your own behalf or set forth any reason
7 why the judgment of this Court should not be imposed upon
8 you?

9 MR. BOTTA: No, sir.

10 THE COURT CLERK: United States of America
11 versus John Yarmosh.

12 MR. BAER: Harold Baer, Jr., 80 Pine Street,
13 New York.

14 Your Honor, I submitted a presentence report
15 to you on or about the same day that I read the Probation
16 Department presentence report.

17 THE COURT: Before you go ahead, I want to
18 make a reference to your memorandum. Unless I misread,
19 you have a statement that besides this minor involvement
20 in bookmaking, John Yarmosh has been a law-abiding citizen.
21 When you refer to "this minor involvement in the bookmaking
22 operation," you are referring to the instant crime?

23 MR. BAER: I am fully aware of the record of
24 Mr. Yarmosh.

25 THE COURT: That's a misstatement, as I read

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2 it, Mr. Baer. Because they say his involvement with the
3 sports betting conspiracy charged in the indictment was
4 as follows and you describe it and you say, besides this
5 minor involvement there are no other convictions in his
6 background.

7 MR. BAER: What page is that?

8 THE COURT: Page seven, the third paragraph.

9 MR. BAER: I have it. Ther is no question
10 but that it can be read in that sense, but there is also
11 a reference clearly to the fact that he had earlier on,
12 and I daresay it is worth nothing, some eight or better
13 years ago other -- and before that -- other state offenses.
14 But they were fairly well-set forth in the probation report
15 and I am confident --

16 THE COURT: Where are the other references
17 in your memorandum?

18 MR. BAER: My recollection so far as our
19 report was concerned, there was no question but that there
20 was a reference to his earlier misdemeanors. It may have
21 been that what -- I will find it for you. But I don't think
22 there is any question in my mind that we are all agreed as
23 to the prior record.

24 THE COURT: Go ahead.

25 MR. BAER: So far as I am concerned that record

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2 too is not fair. I mean the first instance on the record
3 the Probation Department had -- just to show you how well
4 aware of it I am -- was reversed and dismissed. So that
5 it really should have a different disposition than it does.

6 THE COURT: I don't understand that.

7 MR. BAER: There is a record on the Probation
8 Department report to you with respect to a 10-21-60 mis-
9 demeanor.

10 THE COURT: You are saying it is unfair to
11 include a record of arrests because they were dismissed?
12 I don't agree with you. I have had instances where men
13 have been arrested thirty or forty times without a convic-
14 tion, and I suggest that in those cases the fact of arrest
15 indicates probable cause and may indicate a pattern of
16 conduct in the way of life. I don't think you are fair
17 in charging a probation officer with being unfair.

18 MR. BAER: I don't think you are understanding
19 what I am saying, your Honor. I am not arguing that much
20 of what you have on yellow sheets or FBI records is probable
21 cause. I am saying that the picture should be completed
22 and in this instance the last sentence or the last column
23 indicating sentence and not indicating a dismissal seems
24 to be misleading, at best. That's simply what I am saying.
25 If you look at it, you will see what I am saying.

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2 THE COURT: I am looking at it and I am try-
3 ing to understand you. It says dismissed.

4 MR. BAER: Does it say reversed?

5 THE COURT: It just says dismissed. Here it
6 is. You can look at it right now. What's unfair about
7 listing an arrest?

8 MR. BAER: I am saying there is nothing unfair
9 about it but the fact of its having been reversed is some-
10 thing which might have been included and was not. But
11 that's all. The dismissal really for my purposes is suffi-
12 cient.

13 THE COURT: Then I don't understand. Are
14 you saying there was a conviction there that was reversed
15 upon appeal?

16 MR. BAER: Yes, that's what I am saying.

17 THE COURT: Well, it was dismissed.

18 MR. BAER: That's right. It was in fact
19 dismissed. That's why it is reason albeit not totally set
20 forth there.

21 It is not significant enough to dwell on.
22 The only aspect, as you may have seen from the presentence
23 report comment page that I took exception to was that there
24 had been a colloquy before you in connection with the motion
25 I had made for a severance and during the course of that

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colloquy there had been an explanation by the Government of what a pay-and-collect man was. The way I read the information that had been given to the Probation Office and repeated in that report had been given by the Government. It seemed to equate Mr. Yarmosh with Mr. Botta and Mr. Messina on page two. That just is not the way it came across on December 21st before your Honor. In that instance, the pay-and-collect man was explained in that Mr. Abzug had told me the definition the evening before, and I simply responded I did talk to Mr. Abzug, and I don't doubt that he tried to convey to me what he conveyed again today. My understanding of that conversation, and it continues to be my understanding of that conversation was that Mr. Yarmosh was at the bottom of this operation, certainly nowhere close to the larger people who have significant criminal records in any event.

THE COURT: What do you say his role was?

MR. BAER: I am just saying the pay-and-collect role which was not distinguished on page two of the Probation Office Report and which was given to the Probation Office by the United States lumps them together when in fact, at least at the time of this hearing, there was a distinction so as to make it clear that Mr. Yarmosh was not coequal in terms of whatever he might have had in

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2 the way of liability.

3 Insofar as Mr. Yarmish is concerned, I think
4 my presentence memo is in no way significantly different
5 than the Probation Department's. I think very possibly
6 the Probation Department set forth virtually everything
7 that I put forth in my memorandum. I think that the five
8 children that John has and that he continues to support
9 is a significant reason why in fact probation is almost
10 essential in this case. With respect to Paul, whom we
11 read about both in my report and in the Probation Office
12 report, who is paralyzed and who has run up some \$50,000
13 in medical bills, the only way that we can continue without
14 being thrust totally on the State for support with respect:
15 to Paul, is to continue John in his taxi business, which
16 is his business and which in fact he does derive an income
17 from on a regular basis.

18 I think it is also fair to say, and I am
19 confident that the Court understands this, at least as well
20 as I do, that the need for the father in that home, which
21 is a good home according to the probation report, and to
22 my understanding and conversations is virtually imperative
23 if these children and in fact the family is to stay to-
24 gether and prosper.

25 I think there is very little else I can say

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2 with respect to Mr. Yarmosh and his having gotten into this
3 predicament. Clearly, he has not been in this predicament
4 for some length of time in the palst and it is certainly
5 to be hoped that he will not be in this again. The taxi
6 business is a business which he knows and enjoys.

7 Betting, as we all know, is in fact a per-
8 fectly legal situation, but in fact that's how he got into
9 this predicament in the first instance. Hopefully, he
10 will not, even for a short time, do anything more than
11 what is in fact provided as legal under our statutes here
12 in this state. I have nothing further to add to that.

13 THE COURT: John Yarmosh, do you want to
14 make any statement on your own behalf or set forth any
15 reason why the judgment of this Court should not be imposed?

16 MR. YARMOSH: Yes, I beg the Court for leniency
17 for my family, and especially for my son Paul who is handi-
18 capped.

19 THE COURT: Of course this problem comes up
20 in every case. There are innocent members of families who
21 are involved and oftentimes I feel that in the event of
22 a disposition by the Court, depending upon the parties
23 involved, those innocent members suffer more than the man
24 who committed the crime. These are matters which must be
25 considered in advance. I would say if that were a

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2 controlling factor in the case, the suffering that follows
3 in the wake of a sentence, particularly if one is to be
4 imprisoned, especially for innocent members of the family,
5 very few people would go to jail for their crimes. I am
6 very troubled by the situation of your son. We have a
7 number of situations where there are problems with other
8 defendants and their families.

9 Call the next case.

10 THE COURT CLERK: United States of America
11 versus Lawrence Messina.

12 MR. RUBENSTEIN: Good morning, your Honor.
13 I have had an opportunity to read the presentence report.

14 THE COURT: State your name.

15 MR. RUBENSTEIN: Ronald Rubenstein.

16 I had an opportunity to read the probation
17 report, and I have discussed it with my client, your Honor.

18 THE COURT: Before you proceed, what is the
19 status of the Nassau County indictment?

20 MR. RUBENSTEIN: Judge, as Mr. Kornberg
21 stated, Mr. Messina is on the same indictment as Mr. Botta.
22 We are in a similar position, your Honor.

23 THE COURT: You are, too, confident that
24 the case will not go to trial?

25 MR. RUBENSTEIN: I am not as optimistic as

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2 Department Organized Crime Control Bureau having informa-
3 tion with respect to them.

4 Is it correct that you entered into a stip-
5 ulation that you would not submit any information of that
6 nature to the Court?

7 MR. ABZUG: No, that's not correct, your
8 Honor. The agreement that was made, I believe, which you
9 are speaking about, is the defendants Botta and Messina.
10 The agreement that was made by the Government was that the
11 Government would not represent to your Honor that Mr. Botta
12 or Mr. Messina was a member of an organized crime family,
13 which is in all events accurate, your Honor. The Govern-
14 ment is not bargaining away any information which your
15 Honor would deem relevant to the sentencing of these
16 individuals but merely stating what the accurate informa-
17 tion is about these two individuals.

18 THE COURT: Before the Court proceeds to
19 impose sentences, first, I would ask all the defendants
20 to come up and their lawyers, too.

21 First, I would like to state that I am sure
22 the lawyers know and perhaps the defendants too that the
23 matter of sentence has had my concern and attention from
24 the time I received the presentence reports.

25 Sentencing is never an easy task for the

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2 Court, no matter what the nature of the crime, and I have
3 spent a very, very considerable amount of time studying
4 each presentence report and then I had some tentative
5 judgment conferring with the probation officers. I con-
6 firmed with them collectively and also had the chief
7 probation officer present.

8 I have stated frequently that the matter
9 of sentencing is so individual that even though there are
10 any number of defendants named in a given indictment and
11 all convicted of the same or similar offenses, the
12 sentences, depending upon the background and other rele-
13 vant factors, may vary from one defendant to the other.
14 I am saying this particularly for the benefit of the
15 defendants, although I am sure the lawyers are aware of
16 it. That each sentence is individual and after I con-
17 ferred with the probation officers, again, I spent --
18 well, it was required of me because it is my function --
19 much time reflecting upon each individual report and
20 each individual defendant's situation. Obviously, my
21 judgment in this case reflects my considered conscientious
22 judgment as to how the sentences should be imposed.

23 Now, practically every lawyer with the
24 single exception of the one who indicated that he recog-
25 nized because of the situation where his client was

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2 sentenced in the state court, suggested a term of imprison-
3 ment not to exceed that which had been indicated there,
4 but every other lawyer has urged upon the Court leniency.

5 Well, to be lenient is easy and would solve
6 a great many problems of the Court. The Court's function
7 is to be fair and just and this means being fair and just
8 not only to the defendant but to the community which has
9 an interest in the enforcement of its law.

10 Now, it is rather significant that every
11 defendant in this case, I believe, and I am not aware of
12 anyone who has not, has been in the military service and
13 some of the lawyers have urged this upon the Court. I
14 have always felt that when one lives up to community
15 responsibility, that he simply is performing something that
16 is required of him and that certainly military service does
17 not give one license to commit a crime.

18 Now, it is almost -- those of you who parti-
19 cipated in this trial, you know when this jury came in and
20 I made a special point of it, unlike other judges, I never
21 thank a jury for its verdict. They took a solemn oath
22 and they had a duty to perform and they are not entitled
23 to get thanks for doing their job. The same thing applies
24 to one who carries out his function as a citizen and
25 renders military service.

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2 Now, it is another interesting fact in this
3 case, and I say without exception, every one of these
4 defendants come from a substantially good family, good
5 backgrounds and their current family situations are sub-
6 stantially good in practically every instance with perhaps
7 one or two exceptions.

8 Now, coming to the main point that most of
9 the lawyers made. I think I gave some indication of my
10 attitude during the course of the lawyer's comments. That
11 was that the nature of this offense posed no threat to
12 society or to the community. Indeed, I got the impression,
13 and I don't mean to be facetious about it, as the lawyers
14 went along, that the offense that these defendants was
15 charged with was probably akin to that of a pedestrian
16 walking against a street light, or more than that, that
17 the defendants were rendering a service, that is, the
18 opportunity for people who would like to continue gambling.
19 I think there is an exception to this law and this was
20 the reason I made a reference in my charge to the jury
21 as to the purpose that Congress had in mind in the passing
22 of the law. I didn't think it was necessary for me to
23 emphasize it to the lawyers, but since so many of them
24 talk so much about the almost innocuous nature of this
25 offense, I did make a reference at the time I charged the

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2 jury, and I said that that act was passed in an effort to
3 stamp out large-scale operations which annually drain
4 millions of dollars from the public and was a major source
5 of income to organized crime whose activities tend to
6 subvert the democratic process and to corrupt public
7 officials.

8 I am aware of the fact that one of the
9 lawyers took exception to that charge, but I must say and
10 I have no hesitancy in saying it, I was very deliberate
11 in putting that in the charge, particularly because at
12 least one lawyer sought to shrug this offense off as being
13 an utterly innocuous offense. It is far from being an
14 innocuous offense.

15 When Congress passed the law, it stated,
16 and I am stating this now for the benefit of the lawyers
17 particularly in the light of reference to the state court
18 procedure, that Congress finds, (1) organized crime in
19 the United States is highly sophisticated, diversified
20 and widespread activity that annually drains billions of
21 dollars from the American economy by unlawful conduct and
22 the illegal use of force, fraud and corruption; (2) organ-
23 ized crime derives a major portion of its power through
24 money obtained from such illegal endeavors as syndicated
25 gambling, and it goes on to loansharking, theft and fencing

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2 of property and finally winds up with other matters.

3 The purpose of this Act is to seek eradica-
4 tion of organized crime in the United States by strengthen-
5 ing the legal tools in the evidence-gathering process by
6 establishing new penal prohibitions and by providing hard
7 sanctions to deal with the unlawful activities of those
8 engaged in organized crime.

9 I think the lawyers ought to bear in mind
10 as well as the defendants what the purpose of this law was.
11 Now, the repeated references to what went on in state courts,
12 again, I picked this up during the course of some of these
13 statements. It just ignores completely what has been
14 going on. As I said to one of the lawyers, and I looked
15 at the number of arrests and number of convictions and
16 the light sentences that were imposed, there couldn't
17 possibly be any deterrent for it. It almost seems that
18 the fines imposed were a license to go out and continue
19 in their activity.

20 As I also mentioned, it got to be a revolving
21 door process where some of the defendants were just walking
22 out and engaging in their activity and coming back again.

23 So, I want the defendants as well as the
24 lawyers to understand that I have given careful consider-
25 ation to each individual case, but I take into account the

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factors that pertain to the individuals and I must say the particular difficult judgment for me to come to with respect to the one instance in Mr. Yarmosh's case and another instance where the individual situation is not the sole factor to be taken into account, the public interest in the enforcement of its law and avoiding the corruption of public officials. That's what this Act is about, the corruption of public officials that results from this kind of organized activity.

Now, we take the first defendant first, Richard Esposito.

Now, there cannot be any question as far as Mr. Esposito is concerned that he was the central figure in this whole operation. This was the trial testimony, and, Mr. Panzer, I don't believe you were at the trial, but there can't be any doubt that he was the central figure in this case.

Now, it is true that according to the trial testimony and your own statement that he lost a very substantial sum of money. In fact, I believe that at one point, although this was not specific in terms of the trial, but the testimony was to the effect that he really fled from New York City or hid himself for a period of time because he owed such a substantial sum of money. I don't

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THE COURT: Motion granted.

Nicholas Botta.

MR. KORNBERG: He is here, your Honor.

THE COURT: Mr. Botta, there can't be any question that you have been engaged in a continued pattern of illegal activity in this area over an extended period of time and in your case, too, I find a situation of fines imposed which had had no significant impact upon you. I think I mentioned this while your lawyer was speaking. You had a conviction and the probation had not expired when you engaged in the current offense.

The Court imposes a sentence -- I am going to impose a sentence of one year, unless defense counsel requests a year and a day.

MR. KORNBERG: We make that request.

THE COURT: The Court will impose sentence of a year and a day.

MR. KORNBERG: There is an open count.

Defendant moves to dismiss the open count.

THE COURT: Motion granted.

John Yarmosh. Where is he?

MR. BAER: He is right here, your Honor.

THE COURT: Mr. Yarmosh, my records indicate, and you have seen the probation report, there are five --

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2 not five but six -- convictions of bookmaking and related
3 activity in bookmaking on the records. The first one,
4 back in 1961, \$1,000 fine. I don't know whether the fine
5 was suspended or not at that time or whether it was a jail
6 sentence which was suspended. You were also convicted o
7 conspiracy originally. Subsequently, a \$50 a fine and
8 a three-months suspension and conditional discharge of a
9 15-day imposition of sentence. I don't know what that
10 means. That means you didn't serve the fifteen days or
11 does it?

12 MR. BAER: Yes, it does.

13 THE COURT: A \$50 fine, thereafter \$250
14 fine. That, incidentally, is in a case of advancing gam-
15 bling and conspiracy charge.

16 The Court is satisfied that you are a chronic
17 violator in this area of law. The Court imposes the sen-
18 tence of one year and one day.

19 MR. BAER: Your Honor, may we have a week
20 to surrender with respect to that?

21 THE COURT: No, these matters all have been
22 pending for a long time. I think the defendants should
23 have been prepared, because if I grant it in your case in
24 fairness I should grant it in every other case. I am not
25 going to do it.

DEFENDANT

JOHN YARMOSH

DOCKET NO. ➔

76 Cr 1074 (EW)

JUDGMENT AND PROBATION/COMMITMENT ORDERIn the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
MARCH	14	1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

HAROLD BAER, ESQ.

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☐ GUILTY.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly, combining to conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports betting business being in violation of the laws of the State of New York, involving five or more persons who conducted said illegal gambling business & remaining in substantially continuous operation for a period in excess of thirty days & having a gross revenue of \$2,000 in a single day, (T.18, USC, §371.)

as charged in count 1

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **ONE(1) YEAR and ONE(1) DAY** on count 1.

SENTENCE
OR
PROBATION
ORDER

Defendant continued on bail pending appeal, Special Condition being that the record on Appeal and the Appendix on Appeal and Appellant's Points be filed within THIRTY(30) DAYS from this date. And that the United States Attorney file the respondent's brief TEN(10) DAYS thereafter.

Count 2 is dismissed on motion of defendant's counsel with the consent of the Government.

SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

COMMITMENT
RECOMMENDATION

MICROFILM

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

UNITED STATES OF AMERICA,

:

Plaintiff-Appellee,

:

v.

:

JOHN YARMOSH, et al.,

:

Defendants- Appellants. :

AFFIDAVIT OF SERVICE
BY MAIL OF BRIEFS
AND APPENDICES ON
BEHALF OF DEFENDANT-
APPELLANT JOHN YARMOSH

-----X

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

BARBARA MAZZELLA, being duly sworn, deposes and says:
deponent is not a party to the action, is over 18 years of age
and resides at 1380 East 104th Street, Brooklyn, New York.

On May 15, 1977, deponent served two copies of
a brief and one copy of Appendix on Behalf of Defendant-
Appellant John Yarmosh upon each of the following:

Irving Anolik
Attorney for Irving Albahari
and John Ianonne
225 Broadway
New York, New York 10007

Daniel Crupain, Esq.
Attorney for Joseph Falco
401 Broadway
New York, N. Y. 10013

Marvyn Kornberg, Esq.
Attorney for Nicholas Botta
125-10 Queens Blvd.
Kew Gardens, N. Y.

Ronald Rubenstein, Esq.
Attorney for Lawrence Messina
125-10 Queens Blvd..
Kew Gardens, New York 11415

Joel Winograd, Esq.
Attorney for David Steinberg
950 Third Avenue
New York, N. Y. 10022

the addresses designated by said attorneys for that purpose
by depositing true copies of same enclosed in post-paid
properly addressed wrappers in an official depository under
the exclusive care and custody of the United States Postal
Service within the State of New York.

Barbara Mazzella
Barbara Mazzella

Sworn to before me this
16th day of May, 1977

Shirley Watson
Notary Public

SHERLEY WATSON
NOTARY PUBLIC, State of New York
No. 03-4616149
Qualified in Bronx County
Commission Expires March 30, 1979

1 copy received

8/16 the GAG